IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

**And**
**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 18518 of 2004**

**AND**

**WRIT PETITION NO.3814 of 2005**

**WRIT PETITION NO : 18518 of 2004**

Between:

1 Union of India, represented by its Assistant Director/G Intelligence Bureau, New Delhi.
2 Deputy Director, Subsidiary Intelligence Bureau (M.H.A) Government of India, Hyderabad.
3 The Assistant Director/E, Subsidiary Intelligence Bureau (M.H.A) Government of India, Hyderabad.

**..... PETITIONERS**

AND

1 S.A.Khaliq Pasha, Assistant Central Intelligence Officer-II, Adilabad.
2 The Director General of Police AP, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue preferably a writ in the nature of Certiorari or any appropriate writ, order or direction, calling for the records pertaining to OA.No.234/2004 dt. 31/08/2004 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad, and quash the same.

**Counsel for the Petitioners: MR.A.RAJASHEKAR REDDY**

**Counsel for respondent No.1: Mr.K.Sudhakara Reddy**

**Counsel for the Respondent No.2: GP FOR SERVICES I**

–

**WRIT PETITION NO : 3814 of 2005**

Between:

1 Union of India, represented by the Assistant Director/G, Intelligence Bureau, New Delhi.
2 Deputy Director, Subsidiary Intelligence Bureau (M.H.A), Government of India, Hyderabad.
3 The Assistant Director/E, Subsidiary Intelligence Bureau (M.H.A), Government of India, Hyderabad.

**..... PETITIONERS**

AND

1 S.A. Khaliq Pasha, Assistant Central Intelligence Officer-II, Adilabad.
2 The Director General Of Police, Andhra Pradesh, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue preferably a writ in the nature of Certiorari or any appropriate writ, order or direction, calling for the records pertaining to M.A.No. 760/2004 dated 6-1-2005 in the O.A.No. 234 of 2004 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad, and quash the same.

**Counsel for the Petitioners: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)**

**Counsel for respondent No.1: Mr.K.Sudhakara Reddy**

**Counsel for the Respondent No.2: GP FOR SERVICES I**

**The Court made the following:**

–

–

–

–

_

_

_

_

COMMON ORDER: (per GB.J.)

Both the Writ Petitions can be disposed of by a common order.

2. The petitioners, viz., Union of India and others, in both the Writ Petitions are one and the same.

3. Writ Petition No.18518 of 2004 is filed assailing the order passed by the Central Administrative Tribunal (for short Tribunal) in O.A.No.234 of 2004, dated 31.8.2004, whereas Writ Petition No.3814 of 2005 is filed assailing the order passed by the Tribunal in M.A.No.760 of 2004 in O.A.No.234 of 2004, dated 6.1.2005.

4. The respondent No.1 was working as Head Constable in A.P. State Police (SP/Adilabad). The Ministry of Home Affairs, Intelligence Bureau, took him on deputation on 9.3.1992 for a period of five years. Thereafter, while working in Intelligence Bureau, he was promoted to the higher post viz., Assistant Central Intelligence Officer-II. After completion of five years, the matter was moved for his absorption, and the respondent No.1 was asked to give his consent. Accordingly he submitted his consent. In this regard the Director General of Police has also intimated that he has no objection for absorption of 1st respondent. But, however, the State Government appears to have sent another Memo dated 7.3.2002 stating that there was no provision in F.Rs., for permanent absorption on the Government of India. But this observation pales into insignificance as admittedly number of police personnel, who went on deputation, were absorbed in the IB Service consequent on completion of five years. On the premise that the Government have not accepted for permanent absorption, the 1st respondent was sought to be repatriated to his parent Department on 17.4.2003. The said order came to be challenged by the 1st respondent in the above OA. The learned Tribunal, after considering the matter,

allowed the OA and directed the respondents therein to absorb the 1st respondent herein into the service of Ministry of Home Affairs. Thereafter it appears that a review application in MA.No.760 of 2004 was filed and the Tribunal disposed of the said application on 6.1.2005 observing that without going into the merits regarding absorption, directed the respondents therein to pay the salary to the 1st respondent herein from 24.4.2004 till he continues to work in the petitioners' organization, within a period of one month. Aggrieved by both the orders of the learned Tribunal, the present Writ Petitions have been filed by the Central Government.

5. The learned Standing Counsel appearing for Central Government submits that the Tribunal cannot compel the Department to absorb the 1st respondent more especially when there was no consent from the parent Department and therefore the order suffers from illegality and infirmity. It is only when the State Government accords no objection, the 1st respondent would be absorbed. He further submits that since the 1st respondent had already completed 58 years, he was retired from service and at this juncture, the question of his absorption does not arise.

6. We have also heard Mr.K.Sudhakar Reddy, learned counsel for the 1st respondent and the learned Government Pleader for Services-I for the 2nd respondent.

7. The only issue that arises for consideration is as to whether the refusal to absorb 1st respondent was justified in the facts and circumstances of the case.

8. As can be seen from the Memorandum issued by Subsidiary Intelligence Bureau, MHA, Government of India, Hyderabad, dated 17.4.2003, the 1st respondent was not eligible for absorption in the IB as per revised recruitment as he has left with one year service to retire on superannuation (date of birth 2.4.1946) (58 years in AP State). It is to be noted that these revised Recruitment Rules came into force in 2003. Therefore, the issue that has to be considered is as on the date when the 1st respondent completed five years of deputation and when the matter was being taken up for absorption, with reference to the relevant rule at that point of time.

9. It is not in dispute that the 1st respondent was within the prescribed age as on 9.3.1997 when he completed five years of service and therefore he became eligible for absorption. Therefore, the revised Rules cannot be applied as it has only prospective effect and not retrospective. On this ground alone, without going into other aspects, the 1st respondent is deemed to have been absorbed in the IB consequent on completion of five years on 9.3.1997.

10. Even considering from all other aspects also, the 1st respondent is entitled for absorption. The sheet anchor of the Department is that the State Government has not accepted for absorption of the 1st respondent and therefore it is not incumbent on the part of the petitioners to absorb him in the Subsidiary Intelligence Bureau. Even this contention also cannot be accepted for the reason that the Director General and Inspector General of Police addressed a letter to the Principal Secretary to Government, Home Department, Andhra Pradesh, Hyderabad, dated 19.7.2001, stating that the Government has to issue necessary orders for permanent absorption of the personnel who were deputed to Special Intelligence Bureau and to the said communication, the Government appears to have issued a letter on 7.3.2002 to the effect that there is no provision in the F.Rs., for permanent absorption on the Government of India. But this communication, as already observed by us, is not based on legal position as available in the Rules. The very contention of the Department is that the personnel shown in the letter dated 19.7.2001 are entitled for absorption in the Central Services and consequent on their absorption, their lien in the parent department will be terminated. It is also on record that number of police personnel were absorbed in the IB and also continuing in the IB Service. In view of this, it is not understood as to how the Government could refuse the same benefit in respect of the 1st respondent. Under those circumstances we are of the considered view that the order of repatriation is not sustainable as rightly held by the Tribunal. Accordingly we do not find any merit in the Writ Petitions.

11. In the result, both the Writ Petitions are dismissed. The 1st respondent shall be continued in service of the IB until he attains the age of 60 years. No costs.

---

(G.BIKSHAPATHY, J.)

17th day of March, 2005.

---

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Assistant Director/G, Intelligence Bureau, Union of India, New Delhi.
2 The Deputy Director, Subsidiary Intelligence Bureau (M.H.A) Government of India, Hyderabad.
3 The Assistant Director/E, Subsidiary Intelligence Bureau (M.H.A) Government of India, Hyderabad.

4 The Director General of Police AP, Hyderabad.

5 The Registrar, Central Administrative Tribunal, Hyderabad.

6 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

7 2 CD copies

*Form-NIC-OGS/WP{**GR**}*